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BERTRAM V. BURKE

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CHRISTOPHER & WEISBERG, P.A.
200 EAST LAS OLAS BOULEVARD
SUITE 2040
FORT LAUDERDALE, FL 33301

EXAMINER

JANVIER, JEAN D

ART UNIT

PAPER NUMBER

3622

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/314,424

Applicant(s)

BURKE, BERTRAM V.

Examiner

Jean Janvier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 30-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 30-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

Claim Status

Claims 1-28 and 30-46 are currently pending and herein being examined, while claim 29 has been canceled.

Claim Objections

Claim 8 is objected to because of the following informalities-

Regarding claim 8, "the identification of support associated with..." should apparently be -- the identification of supporters associated with...--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, 7,8 and 31(including their dependent claims) are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Regarding claims 1, 2, 7 and 8 (including their dependent claims), it appears that the specification does not explicitly support that **“the transaction card, related to the supporter’s ID, is not associated with a traditional credit card”**

Concerning claim 31 (including its dependent claims), in the step of “entering an ID and an amount spent by a supporter at the merchant in computer code, **the transaction occurring independent of a credit card transaction**”, it appears that the specification does not immediately support that **“the transaction does not involve a credit card transaction”**

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 and 30-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hovakimian, US Patent 5, 466, 919 in view of an article "Flowers as a Double Gift", published in the New York times on May 5, 1990.

As per claim 1-2, 4, 6, 7-10, 31, 25-28, 33, 34, 37, 42, Hovakimian discloses a patronage incentive system for enabling identified purchasers or customers (identified via a merchant's or bank credit card) to contribute or donate to their selected charities whenever they use a specific Bank or issuer's or merchant's credit card to pay for transactions at participating identified merchants' or retailers' POSes. **In fact, the card merchant or card**

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issuer of the credit card agrees to deduct a certain portion (calculated rebates) from each identified purchaser's or donor's transaction involving the use of the credit card and subsequently donate the accumulated portions or rebates to the charity or charities (organizations or non-profit entities) pre-selected by the identified purchaser or customer or donor in an effort to encourage the identified purchaser to use the credit card to pay for transactions at participating merchants' or vendors' or retailers' POSes (this is the credit card issuer's or the credit card merchant's money, not the donor's or purchaser's money), thereby yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer. Further, a "bank card-expedited system" (BAX or independent central clearinghouse) processes the card user's (donor's) purchase during a transaction at a participating or identified merchant's/vendor's POS, once the merchant's POS system establishes a connection with the bank card-expedited system or BAX or clearinghouse, and pays a previously decided or determined amount (calculated rebate) to the identified charity or charities. Finally, the customer's credit card bill is being reduced by an amount equal to the value of the rebate or accumulated rebates and the rebate or the accumulated rebates will be posted to the one or more non-profit organizations' accounts (here, the central clearinghouse or BAX is independent from or not being controlled by the non-profit organizations, the donors/purchasers and the vendors or retailers/merchants themselves) (See abstract; col. 1: 24-48; col. 2: 4 to col. 3: 63; figs. 1-3; claims 1-2).

Further, Hovakimian supports the steps of registering or enrolling the supporters or the credit card holders and their selected charities or recipients of the rebates and the participating (The central clearinghouse or the BAX registers or enrolls the different entities involved in the rebate system-without this step being performed or without the BAX knowledge of the different entities involved in the rebate system, the system cannot operate).

Regarding claims 1, 2, 7, 8 in the step of “entering and recording an ID and an amount spent by a supporter at the merchant in a transaction, the ID incorporated into a transaction card, the transaction card not associated with a traditional credit card”, the ID can be read from or associated with any type of indicia, including any payment instrument like a credit/debit card, shopper’s card, store card, driver’s license, ID card or transaction card, that uniquely identifies the supporter during the transaction at the merchant. Hence, the type of ID (card) used by the supporter to identify himself and facilitate recording of his transaction is a matter of desires, which does not directly impact the functionality of the system or the entering and recording steps. In other words, the type of ID (card) used by the supporter to identify himself and facilitate recording of his transaction at the merchant is a non-functional and non-descriptive material.

Regarding claim 31, in the step of “entering an ID and an amount spent by a supporter at the merchant in computer code, the transaction occurring independent of a credit card transaction”, a rebate is given to the identified supporter by the identified merchant regardless of the method of payment, i.e. cash or debit/credit card, used by the supporter to pay for the transaction at the merchant’s location. To this end, the

type of payment instrument or the method of payment, i.e. cash or debit/credit card, used by a supporter to pay for a transaction at a merchant is a matter of desires, which does not directly impact the functionality of the system or the providing of a rebate to the supporter by the merchant as a result of a purchase transaction at the merchant's location. In other words, the type of payment instrument or the method of payment, i.e. cash or debit/credit card, used by a supporter to pay for a transaction at a merchant is a non-functional and non-descriptive material.

Here, although Hovakimian either implicitly or explicitly supports most of the limitations of the claims, however, he does not expressly disclose, as recited in at least the independent claims, the steps of

Providing by the merchant or retailer, but not the card issuer, the rebates, as determined by the merchant or product vendor, to the donor or the purchaser, wherein the calculated rebates are to be deducted by the merchant from the donor's purchase and paid by the merchant to selected charitable organizations.

Maintaining a schedule of rebates, as determined by one or more merchants or vendors, due to one or more charities.

However, it is described in the article, "Flowers as a Double Gift", that a purchaser buying flowers at a Petal Power POS can earn a ten percent (10%) rebate that is deducted from the purchaser's bill and wherein the 10% rebate is donated to a charity selected by the purchaser or suggested by a Petal Power representative who maintains a charity list having

more than one hundred non-profit organizations. Further, the purchaser's donated 10% rebate is tax deductible. Moreover, it is common practice in the industry for businesses or retailers or merchants, such as **Giant Food**, to encourage their customers to support their stores by donating a certain percentage, as determined by the merchants, of identified customers' transaction amounts (rebates), upon reaching a predetermined threshold or during a specific period of time or schedule, to schools or non-profit organizations previously selected by the customers. In addition, advertisers or sponsors periodically run a special promotion for a particular product or service, especially after a disaster such a flood, fire or hurricane to name a few, by promising to donate a certain amount of money associated with a customer's purchase of the advertised product or service to the RED CROSS or other non-profit organizations in an effort to help the victims.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the above disclosures into the Hovakimian's system so as to have participating merchants or product vendors or retailers share (with the credit card issuer) the cost associated with providing the rebates to the customers for purchases made at the participating merchants or product vendors, using the issuer's credit card, wherein the BAX system (central clearinghouse) receives the transaction data from the merchants' or retailers' POSes and calculates, in accordance with a predefined percentage as agreed upon by the credit card issuer and the merchants, the rebates due to the customers, wherein the merchants deduct their rebate contributions from the supporters purchases, and wherein the total calculated rebates accumulated from a plurality of different merchants or retailers and

stored in a BAX system database are forwarded to the differently selected charities involved by the BAX system (central clearinghouse system) in conjunction with the plurality of merchants during a specific of time based on a predetermined schedule, thereby encouraging the customers to shop at the participating merchants and use the credit card to pay for purchases made at the different merchants' POSes and earn rebates jointly provided by both the merchants and the credit card issuer in accordance with a business agreement between the merchants and the credit card issuer, wherein each merchant can negotiate the percentage of the rebates he wants to provide and wherein the customers' transaction data are shared and used by the credit card issuer and the merchants for further marketing analysis, while yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer.

Finally, whether a merchant or a clearinghouse (BAX system) transmits the rebates to one or more charities or non-profit organizations is a matter of great convenience or desires, which does not directly or indirectly impact the utility or the functionality of the method or system by which rebates are provided to the customers and forwarded to his charities. In other words, this is a non-functional and non-descriptive material.

As per claims 21-24, Hovakimian discloses a patronage incentive system for enabling identified purchasers or customers (identified via a merchant's or bank credit card) to contribute or donate to their selected charities whenever they use a specific Bank or issuer's

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or merchant's credit card to pay for transactions at participating identified merchants' or retailers' POSes. In fact, the card merchant or card issuer of the credit card agrees to deduct a certain portion (calculated rebates) from each identified purchaser's or donor's transaction involving the use of the credit card and subsequently donate the accumulated portions or rebates to the charity or charities (organizations or non-profit entities) pre-selected by the identified purchaser or customer or donor in an effort to encourage the identified purchaser to use the credit card to pay for transactions at participating merchants' or vendors' or retailers' POSes (this is the credit card issuer's or the credit card merchant's money, not the donor's or purchaser's money), thereby yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer. Further, a "bank card-expedited system" (BAX or independent central clearinghouse) processes the card user's (donor's) purchase during a transaction at a participating or identified merchant's/vendor's POS, once the merchant's POS system establishes a connection with the bank card-expedited system or BAX or clearinghouse, and pays a previously decided or determined amount (calculated rebate) to the identified charity or charities. Finally, the customer's credit card bill is being reduced by an amount equal to the value of the rebate or accumulated rebates and the rebate or the accumulated rebates will be posted to the one or more non-profit organizations' accounts (here, the central clearinghouse or BAX is independent from or not being controlled by the non-profit organizations, the donors/purchasers and the vendors or

retailers/merchants themselves) (See abstract; col. 1: 24-48; col. 2: 4 to col. 3: 63; figs. 1-3; claims 1-2).

Here, although Hovakimian either implicitly or explicitly supports most of the limitations of the claims, he does not expressly disclose the steps of

Providing by the merchant, not the card issuer, the rebates, as determined by the merchant or product vendor, to the donor or the purchaser, wherein the calculated rebates are to be deducted by the merchant from the donor's purchase and paid by the merchant to selected charitable organizations.

Maintaining a schedule of rebates, as determined by one or more merchants, due to one or more charities.

However, it is described in the article, "Flowers as a Double Gift", that a purchaser buying flowers at a Petal Power POS can earn a ten percent (10%) rebate that is deducted from the purchaser's bill and wherein the 10% rebate is donated to a charity selected by the purchaser or suggested by a Petal Power representative who maintains a charity list having more than one hundred non-profit organizations. Finally, the purchaser's donated 10% rebate is tax deductible.

Moreover, it is common practice in the industry for businesses or retailers or merchants, such as **Giant Food**, to encourage their customers to support their stores by donating a certain percentage, as determined by the merchants, of the customers' transaction amounts (rebates), upon reaching a predetermined threshold or during a specific period of

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time or schedule, to schools or non-profit organizations previously selected by the customers. In addition, advertisers or sponsors periodically run a special promotion for a particular product or service, especially after a disaster such a flood, fire or hurricane to name a few, by promising to donate a certain amount of money associated with a customer's purchase of the advertised product or service to the RED CROSS or other non-profit organizations in an effort to help the victims.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the above disclosure into the Hovakimian's system so as to have participating merchants or product vendors share (with the credit card issuer) the cost associated with providing the rebates to the customers for purchases made at the participating merchants or product vendors, wherein the BAX system (clearinghouse) receives the transaction data from the merchants' POSes and calculates the rebates due the customers in accordance with a predefined percentage as agreed upon by the credit card issuer and the merchants and wherein the merchants deduct their rebate contributions from the supporters purchases and wherein the total rebates accumulated from a plurality of different merchants and stored in a BAX system database are forwarded to the differently selected charities involved by the BAX system (clearinghouse system) in conjunction with the plurality of merchants during a specific of time based on a predetermined schedule, thereby encouraging the customers to shop at the participating merchants and use the credit card to pay for purchases made at the different merchant POSes and earn rebates jointly provided by both the merchants and the credit card issuer in accordance with a business agreement between the

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merchants and the credit card issuer, wherein each merchant can negotiate the percentage of the rebates he wants to support and wherein the customers' transaction data are shared and used by the credit card issuer and the merchants for further marketing analysis, while yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer.

Finally, whether a merchant or a clearinghouse (BAX system) transmits the rebates to one or more charities or non-profit organizations is a matter of great convenience or desires, which does not directly or indirectly impact the utility or the functionality of the method or system by which rebates are provided to the customers and forwarded to his charities. In other words, this is a non-functional and non-descriptive material.

As per claims 5, 13, 15, 17 19, 20, 32, 35, 36, 40, 41, 43-44 and 46, Hovakimian discloses a patronage incentive system for enabling identified purchasers or customers (identified via a merchant's or bank credit card) to contribute or donate to their selected charities whenever they use a specific Bank or issuer's or merchant's credit card to pay for transactions at participating identified merchants' or retailers' POSes. **In fact, the card merchant or card issuer of the credit card agrees to deduct a certain portion (calculated rebates) from each identified purchaser's or donor's transaction involving the use of the credit card and subsequently donate the accumulated portions or rebates to the charity or charities (organizations or non-profit entities) pre-selected by the identified purchaser or customer or donor in an effort to encourage the identified purchaser to use the credit card to pay for transactions at participating merchants' or vendors' or**

retailers' POSes (this is the credit card issuer's or the credit card merchant's money, not the donor's or purchaser's money), thereby yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer. Further, a "bank card-expedited system" (BAX or independent central clearinghouse) processes the card user's (donor's) purchase during a transaction at a participating or identified merchant's/vendor's POS, once the merchant's POS system establishes a connection with the bank card-expedited system or BAX or clearinghouse, and pays a previously decided or determined amount (calculated rebate) to the identified charity or charities. Finally, the customer's credit card bill is being reduced by an amount equal to the value of the rebate or accumulated rebates and the rebate or the accumulated rebates will be posted to the one or more non-profit organizations' accounts (here, the central clearinghouse or BAX is independent from or not being controlled by the non-profit organizations, the donors/purchasers and the vendors or retailers/merchants themselves) (See abstract; col. 1: 24-48; col. 2: 4 to col. 3: 63; figs. 1-3; claims 1-2).

As per claims 11, 12, 14, 16, 18, 3, 13, 15, 17, 19, 38-39, 44, 30, 45 and 21-24, although Hovakimian supports the steps of registering supporters or the credit card holders and their selected charities or recipients of the rebates, participating merchants and providing donated rebate reports to supporters, **he does not expressly disclose the following**

Entering identification of supporters by enrolling the supporters of the non-profit organizations via remote terminals located at the non-profit organizations' sites or located at the supporters' sites, wherein the supporters use their remote terminals to register themselves and their selected charities to receive donated rebates and download reports on donated rebate payments and transaction activity and wherein the enrollment data are forwarded to the clearinghouse database.

The non-profits enroll or register with supporters and merchants and receive, using their remote terminals, downloaded rebate payments and reports on transaction activity and donated rebates.

Remote terminals available at the merchants' sites and used to record identification associated with supporters and non-profits and receive transmitted reports on transactional activity and rebates from the clearinghouse.

However, a number of well-known processes to register supporters and their selected charities are readily available and well documented in the prior art. For example, a plurality of collection stations are installed within a POS and used by supporters to choose charities to which a contribution is destined. Displays or monitors coupled to these stations are utilized for displaying information with respect to premiums available to non-profits and download contribution information. The stations are connected to a central station or (clearinghouse) via a communication means. The central station also communicates with individual charity system to provide information concerning funds collected on behalf of the non-profits, wherein the funds can be transmitted to the charity systems or their banks. In another example, donation

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cards are distributed to potential donors by a variety of conventional means such as newspapers or mail or made available at store POSes, financial institutions or other establishments. The donors present the cards to a computer-based cash register or automatic teller machine, where the cards enable the donors to select one or more charities or donees.

Further, Hovakimian discloses that it is understood by those skilled in the art that various changes may be made and added to the process and wherein these changes and alternatives are considered to be within the spirit or scope of the present system (col. 3: 64 to col. 4: 2). In other words, whether the supporters register with the system or clearinghouse and select one or more charities to receive the rebates by filling out an off-line application (supported by Hovakimian) or an online application upon accessing the BAX or clearinghouse system using their own home remote terminals or PCs or remote terminals installed at the charities locations while being present at the charities' locations is a matter of great convenience or desires, which does not directly or indirectly impact the utility or functionality of the system.

Finally, the manner in which the non-profit organizations register themselves with the supporters and merchants is a matter of desires, which do not directly or indirectly impact the functionality of the systems.

The above findings are well within the scope and the spirit of the Hovakimian's system, as would have concluded one of ordinary skilled in the art.

Therefore, an ordinary skilled artisan would have been motivated in 1998 with the explosion of client-server and Internet technologies, without reading the present Application,

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to incorporate the above disclosures into the Hovakimian's system so as to have supporters, charities and merchants use remote terminals available at the supporters' sites, charities' locations and merchants' POSes respectively and linked to the BAX or clearinghouse system connected over a communication means such as the Internet, wherein upon accessing using their home remote terminals (or non-profits or merchants' remote terminals) the BAX system the supporters can register with the system by filling out an online or electronic application where they can select one or more charities to receive the rebates from the BAX system provided on behalf of the supporters and subsequently download readouts on their shopping activity and donated rebate payments and wherein the non-profits or charities use their remote terminals to solicit supporters, register with merchants where the supporters will shop and to receive download reports on shopping activity and donated rebate payments and even receive the accumulated rebate payments from the BAX or clearinghouse system and wherein the merchants record via their remote terminals in a database supporters' and non-profits' identifications and transmitted rebates and shopping activity readouts from the BAX or clearinghouse database, thereby rendering the system more flexible by enabling supporters, merchants and charities to register online with the system and communicate with one another in an interactive manner, while making the system readily available and accessible over the Internet to existing or potential supporters, existing or potential non-profits and existing or potential merchants throughout the world twenty-four hours a day and seven days a week, wherein information including transaction data and rebate payments reports and registration data is conveyed, shared and update by the different parties involved in real-time.

**The following is a quotation of 35 U.S.C. 103 (a) which forms the basis
for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 2, 7- 8 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over an article "Flowers as a Double Gift", published in the New York times on May 5, 1990 in view of Hovakimian, US Patent 5, 466, 919.

As per claims 1-2, 7-8 and 31, it is described in the article, "Flowers as a Double Gift", that a purchaser buying flowers at a Petal Power POS (merchant's POS) can earn a ten percent (10%) rebate that is deducted from the purchaser's bill and wherein the 10% rebate is donated to a charity selected by the purchaser or suggested by a Petal Power representative who maintains a charity list having more than one hundred non-profit organizations. Finally, the purchaser's donated 10% rebate is tax deductible (See whole article).

Regarding claims 1, 2, 7, 8 in the step of "entering and recording an ID and an amount spent by a supporter at the merchant in a transaction, the ID incorporated into a transaction card, the transaction card not associated with a traditional credit card", the ID can be read from or associated with any type of indicia, including any payment instrument

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like a credit/debit card, shopper's card, store card, driver's license, ID card or transaction card, that uniquely identifies the supporter during the transaction at the merchant. Hence, the type of ID (card) used by the supporter to identify himself and facilitate recording of his transaction is a matter of desires, which does not directly impact the functionality of the system or the entering and recording steps. In other words, the type of ID (card) used by the supporter to identify himself and facilitate recording of his transaction at the merchant is a non-functional and non-descriptive material.

Regarding claim 31, in the step of "entering an ID and an amount spent by a supporter at the merchant in computer code, the transaction occurring independent of a credit card transaction", a rebate is given to the identified supporter by the identified merchant regardless of the method of payment, i.e. cash or debit/credit card, used by the supporter to pay for the transaction at the merchant's location. To this end, the type of payment instrument or the method of payment, i.e. cash or debit/credit card, used by a supporter to pay for a transaction at a merchant is a matter of desires, which does not directly impact the functionality of the system or the providing of a rebate to the supporter by the merchant as a result of a purchase transaction at the merchant's location. In other words, the type of payment instrument or the method of payment, i.e. cash or debit/credit card, used by a supporter to pay for a transaction at a merchant is a non-functional and non-descriptive material.

Here, although it is expected that, with stores in more than 73 cities providing rebates to customers' selected charities, a centralized process or redemption center should be

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established to process the purchasers' transactions and deduct the 10% rebates from the transactions and wherein the accumulated rebates are subsequently forwarded to the non-profits, **however the article does not expressly disclose using a clearinghouse to perform or manage the various functions or tasks related to the calculating, deducting, providing the donated rebates to the selected charities and enrolling the different entities, i.e. the supporters, the charities and the participating merchants, involved in the rebate program.**

However, as per claims 1, 2, 7-8 and 31, Hovakimian discloses a patronage incentive system for enabling identified purchasers or customers (identified via a merchant's or bank credit card) to contribute or donate to their selected charities whenever they use a specific Bank or issuer's or merchant's credit card to pay for transactions at participating identified merchants' or retailers' POSes. **In fact, the card merchant or card issuer of the credit card agrees to deduct a certain portion (calculated rebates) from each identified purchaser's or donor's transaction involving the use of the credit card and subsequently donate the accumulated portions or rebates to the charity or charities (organizations or non-profit entities) pre-selected by the identified purchaser or customer or donor in an effort to encourage the identified purchaser to use the credit card to pay for transactions at participating merchants' or vendors' or retailers' POSes (this is the credit card issuer's or the credit card merchant's money, not the donor's or purchaser's money), thereby yielding to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to**

keep an existing customer. Further, a **“bank card-expedited system” (BAX or independent central clearinghouse)** processes the card user's (donor's) purchase during a transaction at a participating or identified merchant's/vendor's POS, once the merchant's POS system establishes a connection with the bank card-expedited system or BAX or clearinghouse, and pays a previously decided or determined amount (calculated rebate) to the identified charity or charities. Finally, the customer's credit card bill is being reduced by an amount equal to the value of the rebate or accumulated rebates and the rebate or the accumulated rebates **will be posted to the one or more non-profit organizations' accounts (here, the central clearinghouse or BAX is independent from or not being controlled by the non-profit organizations, the donors/purchasers and the vendors or retailers/merchants themselves)** (See abstract; col. 1: 24-48; col. 2: 4 to col. 3: 63; figs. 1-3; claims 1-2).

Further, Hovakimian supports the steps of registering or enrolling the supporters or the credit card holders and their selected charities or recipients of the rebates and the participating (The central clearinghouse or the BAX registers or enrolls the different entities involved in the rebate system-without this step being performed or without the BAX knowledge of the different entities involved in the rebate system, the system cannot operate).

Moreover, using a clearinghouse or a central processing system or a processing facility or redemption center to clear or process, for example, coupons or other incentives distributed at a plurality of retail store POSes online or off-line is old and well established in the industry for many years (no further disclosure is necessary here or see US Patent 5, 905, 246).

Finally, having a third party, such as a clearinghouse, register or enroll the different entities, i.e. the merchants, the supporters/donors and the non-profit organizations, involved in the incentive program instead of having the store (POS) perform the various mundane tasks including enrolling the different entities (out-sourcing the registration process to a third party or clearinghouse) is a matter of desires.

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention without reading the Instant Application to incorporate the above disclosures into the aforementioned article so as to have a clearinghouse or processing facility (BAX) register/enroll the different entities involved in the rebate program and receive the customers' transactions in real-time from the different merchant POSes in order to calculate and deduct the 10% rebates off the customers' bills and subsequently forward the accumulated rebates to one or more charities selected by the customers, thereby simplifying and synchronizing the process by removing the duties or mundane tasks of enrolling/registering the different entities involved in the rebate program, collecting and processing the rebates from the individual Petal Power store personnel who can now fully concentrate on the task of running their stores and performing the daily activities associated with them, while developing new business strategies, **rather than spending considerable amount of time executing mundane tasks related to enrolling the different entities and processing the rebates.**

Response to Arguments

Applicant's arguments with respect to claimed invention have been considered but are moot in view of the new ground(s) of rejection. In other words, Applicant's remarks are fully addressed in the above Office Action.

Further, contrary to the Applicant's arguments, the claims or at least the independent claims never recite that the use of "cash only" or a cash purchase is required to trigger a rebate. In other words, the claims never completely eliminate or exclude the use of a payment instrument including a credit/debit/charge card to pay for transactions at the merchants' and/or to identify a supporter or donor during a transaction at a merchant's POS.

Additionally, the central clearinghouse is the equivalent of the BAX, as disclosed by Hovakimian, which is independent from or not being controlled by the non-profit organizations, the donors/purchasers/supporters and the vendors or retailers/merchants themselves. Further, Hovakimian teaches a system, as shown in fig. 3, wherein a BAX (BAX Center Processor) or central clearinghouse handles different tasks including calculating and accumulating the amount of money or rebates, resulting from purchases made by the identified donors or supporters at a plurality of participating vendors or merchants, due to selected and identified charities or non-profit organizations and wherein the accumulated rebates or the amount of money due is posted to the charities' accounts. Moreover, the Hovakimian's system is configured to determine at the time of a transaction if the transaction involves a rebate regardless of whether or not the determination is made by a Network Transaction Processor or a BAX or central clearinghouse.

Thus, Hovakimian in combination with the "Flowers" article does indeed render the claimed invention obvious since the Applicant's arguments, as herein presented, are not persuasive and hence, **the present Action has been made final.**

Conclusion

Although the following references were not used in the Office Action, they were highly considered by the Examiner. Applicant is further directed to consult these references.

"Alpha Beta program offers rebate checks", a Supermarket News article, discloses a promotional scheme to provide a rebate check to a customer upon receiving a proof of purchase from the customer. Subsequent to receiving the proof of purchase from the customer, the rebate check can be assigned to the customer, forwarded to the customer's selected charity or divided in half with a portion going to the customer and the remaining portion to the customer's charity.

US Patent 5,909,794 to Molbak et al describes a system for collecting donations from users on behalf of charitable organizations.

US Patent 5,905,246A to Fajkowski discloses a clearinghouse for coupon management and redemption.

US Patent 6,052,674A to Zervides et al discloses an electronic invoicing and collection system and method with charity donations.

US Patent 5, 970, 480 to Kalina discloses a patronage incentive system having a centralized credit interchange system for converting purchase credit awards or rebates through credit exchange system for purchase of investment vehicle wherein an identified customer,

using a specific manufacturer's credit or debit card to pay for transactions at participating merchants 26, receives credit awards or rebates in an effort to encourage the identified customer to continue to use the specific manufacturer's credit or debit card to pay for purchases at merchants 26 rather than a competitor's credit card or other payment instruments. In a preferred embodiment, merchant 26 enters at a POS a customer's transaction data including customer's identification where the customer's transaction data are forwarded to central computer or clearinghouse computer 50 (col. 4: 5-19). Furthermore, when sale/credit award transactions are received by central computer or clearinghouse computer 50, memory or Hard disk 72 will match merchant 26 and member bank 28 assigned and designated credit interchange account numbers to respective purchase credit award contract 74 already stored in memory or Hard disk 72. Purchase award contract 74 utilizes an account number associated with the terms of contract for matching preassigned award credit per type of award vehicle used and credits the identified customer's account 76 with the proper amount of award credits (col. 4: 20-58). And in the end, upon reaching a predetermined threshold number, the purchase credit awards or the rebates are converted into a cash value and used by central computer or clearinghouse computer 50 to purchase an investment vehicle at investment center 82 to thereby yield to immediate customer's gratification and customer or credit card holder loyalty and retention, which helps retain the customer in an era where it is critical to keep an existing customer (See abstract; col. 1: 9-19; col. 4: 59 to col. 5: 13).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3622

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached at (571) 272- 6724.

Non-Official- 571-273-6719.

Official Draft : 571-273-8300

09/15/07

JDJ

Jean D. Janvier

Patent Examiner

Art Unit 3622

**JEAN D. JANVIER
PRIMARY EXAMINER**

A handwritten signature in black ink that reads "Jean D. Janvier". The signature is written in a cursive, flowing style.